

HOUSE BILL REPORT

SB 6181

As Reported By House Committee On:
Law & Justice

Title: An act relating to requirements of a petition for deferred prosecution.

Brief Description: Clarifying the waiver of jury trial rights upon acceptance of a deferred prosecution.

Sponsors: Senator Smith.

Brief History:

Committee Activity:

Law & Justice: 2/21/96 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Murray; Robertson; Smith; Sterk and Veloria.

Staff: Bill Perry (786-7123).

Background: A person charged with a misdemeanor or gross misdemeanor may petition a court of limited jurisdiction to be considered for a deferred prosecution program. A deferred prosecution program requires a defendant to participate in two years of treatment for an underlying alcohol, drug, or mental problem. Successful completion of a deferred prosecution program results in dismissal of the charges. Failure to complete a program results in revocation of the deferral and resumed prosecution of the charges. Deferred prosecutions are used most often in drunk driving cases (DUI).

In order to qualify for a deferred prosecution, a person must allege under oath that the conduct with which he or she is charged is the result of alcoholism, drug addiction, or mental problems for which he or she is in need of treatment. The court may not grant a deferral to any person who "sincerely believes that he is innocent of the charges." The person charged must also sign an acknowledgement of rights, a stipulation to the admissibility of the written police report, and an acknowledgement

that the statement will be entered as evidence and used to support a finding of guilty if the deferred prosecution is later revoked.

In a case decided February 15, 1996, the state Supreme Court upheld a local court rule that requires a DUI defendant petitioning for a deferred prosecution to sign a waiver. By signing the waiver, the defendant gives up specific rights in the event of revocation of the deferral (*Abad v. Cozza*). Under the rule, in addition to acknowledging the admissibility of the written police report as evidence, the defendant must waive the right

- to a jury trial;
- to hear and question witnesses;
- to call witnesses; and
- to testify or not to testify.

The state deferred prosecution statute does not specifically enumerate the waiver of these rights. The court, however, found that the rule was consistent with the statute and with the Legislature's express concern that offenders who fail in deferrals should not be able to "escape punishment because of the difficulties in resuming prosecution at a later date and the congestion in courts at a later date."

The court noted that the waiver of these rights does not mean that a deferred prosecution is "tantamount to a guilty plea." Issues noted by the court that might still be argued at a trial following the revocation of a deferral include matters of the court's jurisdiction and questions of the sufficiency of the state's evidence.

Summary of Bill: The deferred prosecution statute is amended explicitly to require the waiver of certain rights. A defendant seeking a deferral must waive the right

- to testify;
- to a speedy trial;
- to call witnesses to testify;
- to present evidence in his or her defense; and
- to a jury trial.

In addition, the defendant must acknowledge not only the admissibility, but also the sufficiency of the state's written police report.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Deferred prosecution is a valuable program that is designed to give first-time offenders a chance at treatment. It should not be a way for guilty offenders to avoid treatment and punishment.

Testimony Against: None.

Testified: Judge Kip Stiliz, Washington State District and Municipal Court Judges Association (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro); and Larry Steinmetz, Deputy Prosecuting Attorney for Spokane County (pro).